Here the defendant's agent, who had already written to the defendant informing him of an offer, wrote a second letter to his solicitor, putting him in communication with the buyer's solicitor. The Court refused to connect the two letters. This seems to point to the older rule that the signed document must refer to some other writing, not simply to the transaction generally.

It may be doubted whether the English courts have been justified in stretching the doctrine of incorporation by reference to the extent to which the cases of *Studds* v. *Watson* and *Oliver* v. *Hunting* appear to go. While one may well enough be held to have adopted and signed a paper to which he has in a signed writing referred, it is at least going far to say that the signature can be carried over and attached to a writing which is not connected with the first in any other way than that it is a part of the same transaction.

The foregoing considerations are submitted as applying to a case where an unsigned document is sought to be incorporated into one that is signed. When both are signed, there should be no necessity for connecting the two; for the defendant has subscribed his name to all the requisite terms, and this would seem to be all that the statute requires. This view has been taken in *Thayer* v. *Luce* (22 Ohio St. 62), and on this ground *Potter* v. *Peters* might well have been decided differently.

MAY THE VENDOR OF THE GOODWILL OF A BUSINESS SOLICIT HIS OLD CUSTOMERS? — What passes by the sale of a goodwill of a business? What obligations are imposed on the vendor by reason of the sale? These troublesome questions have again been raised in the case of *Trego* v. *Hunt,* 12 *The Times* L. R. 80, decided last December in the House of Lords. The decree in the case restrained the vendor of the goodwill from soliciting the trade of his old customers in person, by agents, or by letter. The case of *Labouchere* v. *Dawson* (L. R. 13 Eq. 322), decided in 1874 by Lord Romilly, M. R., and overruled twelve years later in the Court of Appeals by *Pearson* v. *Pearson* (27 Ch. Div. 145), is re-established, and *Pearson* v. *Pearson* is in turn overruled. The reasoning is this. A vendor of the goodwill sells the benefit of the connection of his concern, that is, the chance that the customers will continue their patronage. It is obvious that by solicitation of the old customers, the vendor, on setting up a similar business, may greatly lessen the purchaser's chance of retaining that patronage. But a man may not depreciate what he has sold: therefore the vendee of the goodwill is entitled to protection, and his vendor will be restrained accordingly from soliciting the old customers. "It is immaterial," says Lord Herschell, "whether the obligation on the part of the vendor to refrain from canvassing the customers is to be regarded as based on the principle that he is not entitled to depreciate that which he has sold, or as arising from an implied contract to abstain from any act intended to deprive the purchaser of that which has been sold." Of course, a logical application of either principle would carry the courts far beyond restraining a mere solicitation of old customers. This fact is recognized; but it is acknowledged that it is now too late to question the authorities which establish the vendor's right to set up a similar business (*Shackle* v. *Baker,* 14 Ves. 468), to advertise his business and solicit customers in any public way (*Labouchere* v. *Dawson,* L. R. 13 Eq. 322), so long as he does not use the firm name, or represent that he is continuing

the old business (*Churton* v. *Douglas*, Johns. 174, at 191), or to deal with his old customers (*Leggott* v. *Barrett*, 15 Ch. Div. 306). That the vendee's right cannot be protected to the full, is no reason in the eyes of the court for not extending protection as far as these authorities will allow.

The American decisions on this point are few, but emphatically opposed to the conclusion reached in *Trego* v. *Hunt*. The courts take the ground that it is the vendor, not the purchaser, who should have protection. The vendor has sold the advantage of an established business. It is only fair that he should be given every opportunity to compete on an equal footing with the purchaser. Goodwill, to be sure, is the probability of retaining the concern's customers; but it is a probability which the vendor may diminish by the exercise of certain unquestioned rights. What consistency is there in allowing the vendor to enter into the same kind of business, and to solicit trade publicly, and yet barring him from his most effective means of competing successfully, namely, the solicitation of his old customers? This is the attitude of the American courts. (*Williams* v. *Farrand*, 68 Mich. 473; *Cottrell* v. *Babcock &c. Mfg. Co.*, 54 Conn. 122; *Close* v. *Flesher*, 28 N. Y. Supp. 736.)

After all, is it not a question of original definition? Are not the courts, under the guise of deducing conclusions from accepted definitions, in reality defining anew the nature of goodwill? As goodwill is conceived of, on the one hand, as the chance of keeping the old customers subject to unlimited competition on the part of the vendor, or, on the other, as that chance free from such competition, so will the vendor be allowed or denied the right to solicit his old customers. And perhaps the English view of the scope of goodwill is the more just. Eighty years ago, Vice-Chancellor Plumer said: "A person, not a lawyer, would not imagine when the goodwill and trade of a retail shop was sold, the vendor might, the next day set up a shop within a few doors and draw off all the customers. The goodwill of such a shop in good faith and understanding must mean all the benefit of the trade, and not merely a benefit of which the vendor might deprive him the next day." (*Harrison* v. *Gardner*, 2 Mad. 198, at 219.) Yet mainly because of a strong aversion to the enforcement of any contract in restraint of trade that was not to be found in express words, the courts declined to adopt the lay conception of goodwill so vigorously approved by the Vice-Chancellor. Is not the decision in *Trego* v. *Hunt* commendable in that, as far as it is possible, it does adopt the view, then and now prevalent outside the courts, as to what constitutes fair business dealing? It certainly clothes that shadowy, intangible property, goodwill, stripped of wellnigh all its virtue by unfriendly decisions, with a little substance.

There is one seeming inconsistency in the law on this point as laid down to-day in the English courts. Solicitation of customers when the business is voluntarily sold is restrained; solicitation after the business is compulsorily sold in bankruptcy proceedings is not restrained. (*Walker* v. *Mottram*, 19 Ch. Div. 355.) On what principle can goodwill mean one thing when a man disposes of his business voluntarily, and another when his business is sold out by his assignees in bankruptcy?

MONEY PAID ON A BILL BEARING A FORGED INDORSEMENT. — Does the drawee who pays a bill with a forged indorsement upon it have to bear the loss? Is the familiar doctrine of *Price* v. *Neal* properly extended to